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FACSIMILE #571 273 0052, FOR BOARD  
OF PATENT APPEALS AND  
INTERFERENCES, APPEAL FROM FINAL  
FROM EXAMINER BETHANY L. GRILES,  
TELEPHONE 703 305 1839, ART UNIT 3643** fax of 31 pages  
including Claims Appendix I(2 pages), Evidence Appendix II(1 pages), Related  
Proceedings Appendix III(1 page)

Our Ref. No. P-1542-021

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BOARD OF  
PATENT APPEALS AND INTERFERENCES

In Re Application of:  
**LINKLATER**

Serial No. 10/654,854

Filed: September 3, 2002

# For: A TWO BARRELED FERRULE FISHING LURE

Date: July 6, 2005

Group Art Unit: 3643

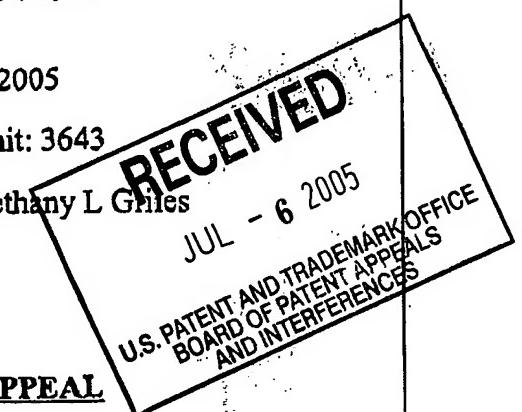
Examiner: Bethany L Gries

**FIRST SUBSTITUTE BRIEF ON APPEAL**

Hon. BOARD OF PATENT APPEALS AND INTERFERENCES  
Washington, D.C. 20231

This First Substitute Brief on Appeal follows the Examiner's June 8, 2005 Notification of Non-Compliant Appeal Brief. The Examiner advised that "The brief does not contain the items required under 35 CFR 41.37(c), or the items are not under the proper heading or in the proper order." The original Brief on Appeal was filed under the format of the prior 37 CFR 1.192. Your applicant now files its First Substitute Brief on

Certificate of facsimile filing of First Substitute Brief on Appeal, Application No. 10/654,854 on July 6, 2005 by Floyd E. Ivey in response to Notification of Non-Compliant Appeal Brief of June 3, 2005.



1 Appeal pursuant to 35 CFR 41.37(c). The filing is timely.

2 **1. (41.37(c)(i)REAL PARTY IN INTEREST:** the real party in interest is the applicant,  
3 Mr. Darcy Linklater, 201 Main Street, P.O. Box 156, Starbuck, Wa. 99359..

4  
5 **2. (41.37(c)(ii)RELATED APPEALS AND INTERFERENCES:** There are no related  
6 appeals or interferences.

7

8 **3. (41.37(c)(iii)STATUS OF CLAIMS:** Claims 1 through 5 were filed with the original  
9 application. Claims 1 through 4 are pending. Claim 5 was cancelled in the Paper filed  
10 June 3, 2004. Claims 1 through 4 are appealed.

11

12 **4. (41.37(c)(iv)STATUS OF AMENDMENTS SUBSEQUENT TO FINAL:** There  
13 have been no amendments subsequent to the Examiner's Final Action.

14

15 **5. (41.37(c)(v)SUMMARY OF CLAIMED SUBJECT MATTER:** Claims 1, 2, 3 and  
16 4 are involved in this appeal. Each claim appealed is set forth fully in the Claims  
17 Appendix.

18         THE BOARD IS ALERTED TO THE SUBMISSION OF SUBSTITUTE  
19 DRAWINGS, FILED JUNE 4, 2004 AND EXPLAINED IN THE PAPER FILED JUNE  
20 3, 2004, WHICH WHOLLY REPLACE THE DRAWINGS FILED WITH THE  
21 APPLICATION. THERE WAS NO NEW MATTER SUBMITTED. A COPY OF THE  
22 SUBSTITUTED DRAWINGS ARE FILED HEREWITH IN THE APPENDIX II.  
23 REFERENCE TO THE DRAWINGS IS SOLELY TO THE SUBSTITUTE  
24 DRAWINGS.

25         THE BOARD IS ALERTED TO THE SUBMISSION OF AN AMENDMENT

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1 TO THE BRIEF DESCRIPTION OF THE DRAWINGS ON JUNE 3, 2004. THIS  
2 AMENDMENT WHOLLY REPLACES THE "BRIEF DESCRIPTION OF THE  
3 DRAWINGS" AT PAGE 2 LINES 18-25 OF THE "ORIGINAL" SPECIFICATION.  
4 THUS, REFERENCE TO THE ORIGINAL SPECIFICATION WILL BE DENOTED  
5 "ORIGINAL" AND REFERENCE TO THE AMENDED SPECIFICATION WILL BE  
6 DENOTED "AMENDED".

7

8           **A. A CONCISE EXPLANATION OF CLAIM 1:** Claim 1 is an independent  
9 claim. A concise explanation of the subject matter defined in this independent claim,  
10 with reference to the specification by page and line number, and to the drawings by  
11 reference characters is now provided:

12           **CLAIM 1:** A fishing lure is claimed. The lure has two elongated shafts, a  
13 primary shaft (10) and a lure shaft (40). The lure shaft (40) and the primary shaft (10) are  
14 fixedly interconnected by shaft interconnection means at the lure shaft second end (50)  
15 proximal the second end (60) of the primary shaft (10). A fish hook means (70) affixed  
16 to the primary shaft (10) proximal the second end (60) of the primary shaft (10). A lure  
17 shaft locking means (110) proximal the first end (20) to secure the lure shaft first end  
18 (50); means proximal the first end to receive fishing leader. The lure shaft (40) sized to  
19 receive a lure or a bate; the bate secured from "throw off" by the lure shaft (40) at the  
20 lure shaft first end (50) being received by the locking means (110).

21

22 THE FOLLOWING, FOR CLAIM 1, IS A STATEMENT OF THE REFERENCES TO  
23 THE SPECIFICATION BY PAGE AND LINE NUMBER, AND TO THE  
24 DRAWING(S), BY REFERENCE CHARACTERS.

25

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1

2

3 The primary shaft (10) has a first end (20) and a second end (30);

4

5 Primary shaft (10)(Original Specification page 2/line 9, 11, 12, 14, 15; June 3,  
6 2004 Amended Specification page 5/line 12, 14; Original Specification p3/line 7,  
7 10, 12, 17, 20, 23, 24, 31; page 4/line 3, 6, 11, 15, 22 and 23; Drawings 1, 1B and  
8 2) having a first end (20)(Original Specification p3/lines 7, 13, 15, 24; page  
9 4/lines 12, 20, 22, 25; Drawings 1 and 2); and a second end (30)(Original  
10 Specification p3/lines 8, 10, 12, 25; page 4/line 1; Drawings 1, 1B, 2);

11

12 The elongated lure shaft (40) has a lure shaft first end (50) and a lure shaft second  
13 end (60);

14

15 Lure shaft (40) (Original Specification page 2/line 10, 11, 13; Amended  
16 Specification page 5/line 13, 16, 25; Original Specification page 3/line 8, 14, 17,  
17 19, 23, 25; page 4/line 9, 12, 14, 15, 16, 30, 31; Drawings 1, 1B, 2) having a lure  
18 shaft first end (50) (Original Specification page 3/line 8, 13, 25; page 4/line 13,  
19 31; page 5/line 2,3; Drawings 1) and a lure shaft second end (60) (Original  
20 Specification page 3/lines 9, 26; Drawings 1, 1B, 2);

21

22 The lure shaft (40) at the lure shaft second end (50) fixedly interconnected by  
23 shaft interconnection means to the primary shaft (10) proximal the second end (60);

24

25 The lure shaft (40) (Original Specification page 2/line 10, 11, 13; Amended  
26 Specification page 5/line 13, 16, 25; Original Specification page 3/line 8, 14, 17,  
27 19, 23, 25; page 4/line 9, 12, 14, 15, 16, 30, 31; Drawings 1, 1B, 2) at the lure  
28 shaft second end (50) (See Claim 1 subparagraph b; drawings 1) fixedly  
interconnected by shaft interconnection means to the primary shaft (10) (See  
claim 1, subparagraph a; drawings 1; 1B, 2) proximal the second end (60) (See  
Claim 1 subparagraph b; Drawings 1, 1B, 2);

29

30 A fish hook means (70) having a hook shaft (90); the hook shaft (90) secured by  
31 hook shaft affixing means (100) to the primary shaft (10) proximal the second end (60);

32

33 a fish hook means (70) (Original Specification page 3/line 11; Drawings 1, 1B, 2)  
34 having a hook shaft (90) (Original Specification page 3/line 11, 27, 30; page 4/line  
35 1, 3, 4; Drawings 1B); the hook shaft (90) secured by hook shaft affixing means  
36 (100) (Original Specification page 3/line 11, 27, 29; Drawing 1, 1B, 2) to the  
37 primary shaft (10) proximal the second end (60);

38

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1  
2 A lure shaft locking means (110) proximal the first end (20) to secure the lure  
3 shaft first end (50); means proximal the first end to receive fishing leader;

4 Lure shaft locking means (110) (Original Specification page 3/12; Drawings 1,  
5 1A, 2) proximal the first end (20) to secure the lure shaft first end (50); means  
proximal the first end to receive fishing leader;

6 The lure shaft (40) sized to receive a lure or a bate; the bate secured from "throw  
7 off" by the lure shaft (40) at the lure shaft first end (50) being received by the locking  
8 means (110);

9 The lure shaft (40) (Original Specification page 2/line 10, 11, 13; Amended  
10 Specification page 5/line 13, 16, 25; Original Specification page 3/line 8, 14, 17,  
11 19, 23, 25; page 4/line 9, 12, 14, 15, 16, 30, 31; Drawings 1, 1B, 2) sized to  
receive a lure or a bate; the bate secured from "throw off" by the lure shaft (40)  
(Original Specification page 2/line 10, 11, 13; Amended Specification page 5/line  
12 13, 16, 25; Original Specification page 3/line 8, 14, 17, 19, 23, 25; page 4/line 9,  
13 12, 14, 15, 16, 30, 31; Drawings 1, 1B, 2) at the lure shaft first end (50) being  
received by the locking means (110).

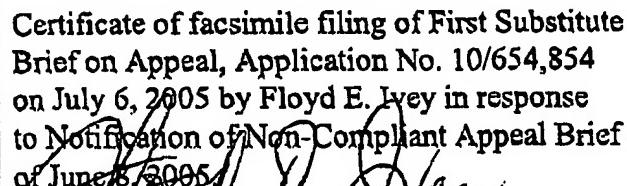
14

15 **B. A STATEMENT FOR CLAIM 1 OF EVERY MEANS PLUS**  
16 **FUNCTION AND STEP PLUS FUNCTION ARE NOW IDENTIFIED AND THE**  
17 **STRUCTURE, MATERIAL, OR ACTS DESCRIBED IN THE SPECIFICATION**  
18 **AS CORRESPONDING TO EACH CLAIMED FUNCTION ARE SET FORTH**  
19 **WITH REFERENCE TO THE SPECIFICATION BY PAGE AND LINE**  
20 **NUMBER, AND TO THE DRAWING(S), BY REFERENCE CHARACTERS:**

- 21 1. "The lure shaft (40)...interconnected by shaft interconnection means to the  
22 primary shaft (10)..."

23 The function is the interconnection of the lure shaft (40) with the primary shaft  
24 (10). The means is in the Original specification, Page 3/lines 19-22 as follows: "The lure

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1 shaft (40) is connected to the primary shaft (10) by shaft interconnection means which  
2 includes, but as will be recognized by those of ordinary skill in interconnection arts is not  
3 limited to welding, wire wrap, wire twist, and ferrule." Drawing 1B illustrates the shaft  
4 interconnection means as reference character 13.

5 2. "A fish hook means (70) having a hook shaft (90); the hook shaft (90) secured  
6 by hook shaft affixing means (100) to the primary shaft (10) proximal the second  
7 end (60);"

8 The function of "fish hook means" is a hook for fishing. The means is a fish hook  
9 at Original specification page 3/line 11. The function of "hook shaft affixing means"  
10 (100) is to attach a fish hook shaft to the lure. The means is found in the Original  
11 specification stating "...The hook shaft (90) is affixed by hook shaft affixing means  
12 includes but is not limited to welding, wire wrap, wire twist or ferrule." is found at the  
13 Original specification page 3/lines 27-28.

14 3. "A lure shaft locking means (110) proximal the first end (20)..."

15 The function of "lure shaft locking means" is stated in the Original specification  
16 page 3/lines 12-14" as "...Lure shaft locking means (110) is positioned proximal the first  
17 end (20) to secure the lure shaft first end (50) when a lure or bait has been skewered  
18 onto the lure shaft (40). The means is "(Original Specification page 3/12; Drawings 1,  
19 1A, 2) is by a double barrel ferrule (110) (Original Specification page 2/line 12, 20, 24;  
20 Drawings 1A) the double barrel ferrule (110) having a first barrel (120) (Original  
21 Specification page 2/line 12; page 4/line 11; Drawing 1A) receiving and securing the  
22 primary shaft (10) proximal the first end (20) and having a second barrel (130) (Original  
23 Specification page 2/line 13, 24; page 4/line 12, 16, 17; page 5/line 1,2; drawing 1A)  
24 receiving the lure shaft (40) at the lure shaft first end (50).

25  
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1

2           **C. A STATEMENT FOR CLAIM 2, A DEPENDENT CLAIM, OF EVERY**  
3           **MEANS PLUS FUNCTION AND STEP PLUS FUNCTION ARE NOW**  
4           **IDENTIFIES AND THE STRUCTURE, MATERIAL, OR ACTS DESCRIBED IN**  
5           **THE SPECIFICATION AS CORRESPONDING TO EACH CLAIMED**  
6           **FUNCTION ARE SET FORTH WITH REFERENCE TO THE SPECIFICATION**  
7           **BY PAGE AND LINE NUMBER, AND TO THE DRAWING(S), BY REFERENCE**  
8           **CHARACTERS:**

9

**CLAIM 2:**

10           1. "the shaft interconnection means (28)..."

11           The function is the interconnection of the lure shaft (40) with the primary shaft  
12 (10). The means is in the Original specification, Page 3/lines 19-22 as follows: "The lure  
13 shaft (40) is connected to the primary shaft (10) by shaft interconnection means which  
14 includes, but as will be recognized by those of ordinary skill in interconnection arts is not  
15 limited to welding, wire wrap, wire twist, and ferrule." Drawing 1B illustrates the shaft  
16 interconnection means as reference character 13.

17

18           2. "hook shaft affixing means (100)..."

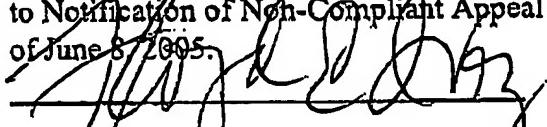
19           The function of "hook shaft affixing means" (100) is to attach a fish hook shaft to  
20 the lure. The means is found in the Original specification stating "...The hook shaft (90)  
21 is affixed by hook shaft affixing means includes but is not limited to welding, wire wrap,  
22 wire twist or ferrule." is found at the Original specification page 3/lines 27-28.

23

24

25           3. "lure shaft locking means (110)..."

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1       The function of "lure shaft locking means" is stated in the Original specification  
2 page 3/lines 12-14" as "...Lure shaft locking means (110) is positioned proximal the first  
3 end (20) to secure the lure shaft first end (50) when a lure or bait has been skewered  
4 onto the lure shaft (40). The means is "(Original Specification page 3/12; Drawings 1,  
5 1A, 2) is by a double barrel ferrule (110) (Original Specification page 2/line 12, 20, 24;  
6 Drawings 1A) the double barrel ferrule (110) having a first barrel (120) (Original  
7 Specification page 2/line 12; page 4/line 11; Drawing 1A) receiving and securing the  
8 primary shaft (10) proximal the first end (20) and having a second barrel (130) (Original  
9 Specification page 2/line 13, 24; page 4/line 12, 16, 17; page 5/line 1,2; drawing 1A)  
10 receiving the lure shaft (40) at the lure shaft first end (50).

11

12

13       **D. A STATEMENT FOR CLAIM 3, A DEPENDENT CLAIM, OF EVERY**  
14 **MEANS PLUS FUNCTION AND STEP PLUS FUNCTION ARE NOW**  
15 **IDENTIFIES AND THE STRUCTURE, MATERIAL, OR ACTS DESCRIBED IN**  
16 **THE SPECIFICATION AS CORRESPONDING TO EACH CLAIMED**  
17 **FUNCTION ARE SET FORTH WITH REFERENCE TO THE SPECIFICATION**  
18 **BY PAGE AND LINE NUMBER, AND TO THE DRAWING(S), BY REFERENCE**  
19 **CHARACTERS:**

20

21

**CLAIM 3:**

22

**1. "the shaft interconnection means (28)..."**

23

24

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28

The function is the interconnection of the lure shaft (40) with the primary shaft (10). The means is in the Original specification, Page 3/lines 19-22 as follows: "The lure shaft (40) is connected to the primary shaft (10) by shaft interconnection means which

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1 includes, but as will be recognized by those of ordinary skill in interconnection arts is not  
2 limited to welding, wire wrap, wire twist, and ferrule." Drawing 1B illustrates the shaft  
3 interconnection means as reference character 13.

4

5 **2. "the lure shaft locking means (110)..."**

6 The function of "lure shaft locking means" is stated in the Original specification  
7 page 3/lines 12-14" as "...Lure shaft locking means (110) is positioned proximal the first  
8 end (20) to secure the lure shaft first end (50) when a lure or bait has been skewered  
9 onto the lure shaft (40). The means is "(Original Specification page 3/12; Drawings 1,  
10 1A, 2) is by a double barrel ferrule (110) (Original Specification page 2/line 12, 20, 24;  
11 Drawings 1A) the double barrel ferrule (110) having a first barrel (120) (Original  
12 Specification page 2/line 12; page 4/line 11; Drawing 1A) receiving and securing the  
13 primary shaft (10) proximal the first end (20) and having a second barrel (130) (Original  
14 Specification page 2/line 13, 24; page 4/line 12, 16, 17; page 5/line 1,2; drawing 1A)  
15 receiving the lure shaft (40) at the lure shaft first end (50).

16

17 **3. "the hook shaft affixing means (100)**

18 The function of "hook shaft affixing means" (100) is to attach a fish hook shaft to  
19 the lure. The means is found in the Original specification stating "...The hook shaft (90)  
20 is affixed by hook shaft affixing means includes but is not limited to welding, wire wrap,  
21 wire twist or ferrule." is found at the Original specification page 3/lines 27-28.

22

23 **E. A STATEMENT FOR CLAIM 4, A DEPENDENT CLAIM, OF EVERY  
24 MEANS PLUS FUNCTION AND STEP PLUS FUNCTION ARE NOW  
25 IDENTIFIES AND THE STRUCTURE, MATERIAL, OR ACTS DESCRIBED IN**

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1 THE SPECIFICATION AS CORRESPONDING TO EACH CLAIMED  
2 FUNCTION ARE SET FORTH WITH REFERENCE TO THE SPECIFICATION  
3 BY PAGE AND LINE NUMBER, AND TO THE DRAWING(S), BY REFERENCE  
4 CHARACTERS:

5

6 **CLAIM 4:**

7 b. "the lure shaft (40) having a spring function urging the lure shaft (40) away  
8 from the primary shaft (10) when the lure shaft (40) is received into the second barrel  
9 (130)."

10 The function is urge the lure shaft (40) away from the primary shaft (10).... The  
11 means is a spring function of the lure shaft urge it away from the primary shaft (10).  
12 (Original Specification page 2/line 10, 11, 13; Amended Specification page 5/line 13, 16,  
13 25; Original Specification page 3/line 8, 14, 17, 19, 23, 25; page 4/line 9, 12, 14, 15, 16,  
14 30, 31; Drawings 1, 1B, 2)

15

16 **6. (41.37(c)(vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL::**

17 A. Whether Claims 1, 2 and 3 are unpatentable under 35 U.S.C. 102(b) as being  
18 anticipated by Boullt et al (US5605004).

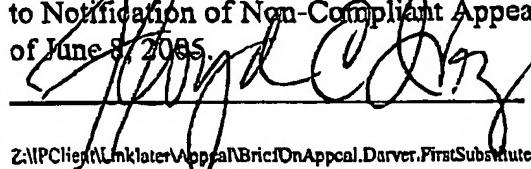
19

20 B. Whether Claim 4 is unpatentable under 35 U.S.C. 103(a) over Boullt et al in  
21 view of Ogle (US5253446).

22

23 **7. (41.37(c)(vii) ARGUMENT**

24 The Claims subject to this appeal, claims 1, 2, 3 and 4, do not stand or fall  
25 together.

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1           The Claims subject to this appeal, claims 1, 2, 3 and 4, do not form groups.  
2       In accordance with *In re Young*, 927 F.2d 588, 590 (C.A. Fed. 1991), arguments are set  
3 forth regarding these points relative to of each of Claims 1, 2, 3 and 4.

4

5           **A. Regarding Rejections of Claims 1, 2 and 3 under 35 U.S.C. 102(b): Law**  
6           **regarding 35 U.S.C. 102(claims are argued separately).**

7           A rejection for anticipation under section 102 requires that each and every  
8 limitation of the claimed invention be disclosed in a single prior art reference. (*Helifix*  
9 *Ltd. v. Blok-Lok, Ltd.* 208 F.3d 1339, 1346, C.A.Fed. (Mass.),2000; For a prior art  
10 reference to anticipate in terms of 35 U.S.C. S 102, every element of the claimed  
11 invention must be identically shown in a single reference. The elements must be arranged  
12 as in the claim under review. (*In Re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567  
13 (Fed. Cir. 1990). Prior art anticipates an invention ... if a single prior art reference  
14 contains each and every element of the patent at issue, operating in the same fashion to  
15 perform the identical function as the patented product. "Thus, any degree of physical  
16 difference between the patented product and the prior art, NO MATTER HOW SLIGHT,  
17 defeats the claim of anticipation." (*American Permahedge, Inc. v. Barcana, Inc.*, 857 F.  
18 Supp. 308, 317, 32 USPQ2d 1801, 1807-08 (S.D. N.Y. 1994); It is incumbent upon the  
19 examiner to identify wherein each and every facet of the claimed invention is disclosed in  
20 the applied reference.(MPEP 1504.02 (page 1500-26 Rev. 2 May 2004; *Ex Parte Levy*, 17  
21 USPQ2d 1461, 1462 (Bd. Pat. App. & Int'l 1990)). Since the structures of Boullt differ  
22 from that shown herein, the reference must be discounted as anticipating the present  
23 invention.

24           Thus, in summary regarding Claims 1, 2, 3 and 4, all rejected under 35 U.S.C.  
25 102(b), has the following been shown:

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*Floyd E. Ivey*

- 1        1. that each and every limitation of the claimed invention is disclosed in Boullt et
- 2        al. US Patent No. 5605004.
- 3
- 4        2. that Boullt et al anticipates, in terms of 35 U.S.C. S 102, every element of the
- 5        claimed invention such that each element is identically shown in this single
- 6        reference.
- 7
- 8        3. that the elements of Boullt et al are arranged as in the claim under review.
- 9
- 10      4. That the Examiner has met the burden "...to identify wherein each and every
- 11      facet of the claimed invention is disclosed in the applied reference of Boullt et al.

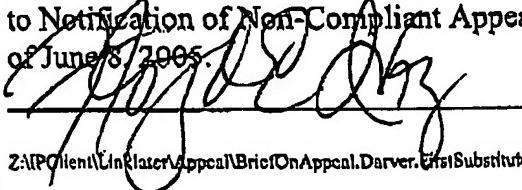
12  
13        The claim of anticipation is defeated if "...any degree of physical difference  
14      between the patented product and the prior art, NO MATTER HOW SLIGHT..." exists.  
15      Your applicant respectfully asserts that the Examiner has not met the requirements of the  
16      cases and principals above cited. Your applicant respectfully asserts that the structures of  
17      Boullt et al differ from the structures claimed in Claims 1, 2 and 3 and hence that the  
18      reference of Boullt et al must be discounted as anticipating the present invention.

19  
20      **CLAIM 1:**   The Examiner has rejected claims 1-3 as anticipated by Boullt,  
21      under 35 U.S.C. 102(b).

22      Regarding the Examiner's rejection of Claim 1, the Examiner states that Boullt et  
23      al

24      "...disclose a fishing lure comprising an elongated primary shaft 20 having a first  
25      and second end, an elongated lure shaft 28 having a lure shaft first end and a lure  
26      shaft second end, the lure shaft at the lure shaft second end fixedly interconnected

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1 by shaft interconnection means to the primary shaft proximal the second end (see  
2 structure located between elements 26 and 22); a fish hook means having a hook  
3 shaft 42 the hook shaft secured by hook shaft affixing means to the primary shaft  
4 proximal the second end (figure 8); the lure shaft locking means proximal the first  
5 end to secure the lure shaft first end; means proximal the first end to receive  
fishing leader (col 4, lines 20-30); and the lure shaft 28 sized to receive a lure or  
bait; the bait secured from "throw off" by the lure shaft at the lure shaft first end  
being received by the locking means (best seen in figure 8, where elements 24 and  
48 join in a joint covered by the body portion 46).

6 Your applicant respectfully reiterates the structure of the present invention from  
7

8 Claim 1. The present invention comprises:

9 1. (Currently amended) A fishing lure comprising:

10 a. an elongated primary shaft (10) having a first end (20) and a second end (30);

11 b. an elongated lure shaft (40) having a lure shaft first end (50) and a lure shaft  
second end (60);

12 c. the lure shaft (40) at the lure shaft second end (50) fixedly interconnected by  
shaft interconnection means to the primary shaft (10) proximal the second end (60);

13 d. a fish hook means (70) having a hook shaft (90); the hook shaft (90) secured  
by hook shaft affixing means (100) to the primary shaft (10) proximal the second end  
(60);

14 e. lure shaft locking means (110) proximal the first end (20) to secure the lure  
shaft first end (50); means proximal the first end to receive fishing leader;

15 f. the lure shaft (40) sized to receive a lure or a bait; the bait secured from "throw  
off" by the lure shaft (40) at the lure shaft first end (50) being received by the locking  
means (110).

16 The Examiner incorrectly analogizes a first arm 24 and a second arm 26, from  
17 Boullt et al col 4/lines 20-23 and col 4/lines 33-39, with the primary shaft (10) and the  
18 lure shaft (40) of the present invention. The structure of Boullt et al is distinguished from  
19

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1 that of the present invention. In Boullt et al col 4/lines 20-23 and col 4/lines 33-39, there  
2 is disclosed:

3 The preferred embodiment, as shown in FIGS. 1 through 8, is comprised of a wire  
4 shaft 20 angularly bent into a substantially V-shape at an apex 22 forming a first  
arm 24 and a second arm 26.

5 \*\*\*\*\*

6 The prime novelty of the invention resides in the addition of a hollow tube 28  
7 positioned over and intimately surrounding the shaft first arm 24. This tube 28  
reinforces the arm 24, increasing the stiffness and changing the structural integrity  
8 entirely, thus augmenting the first arms 24 rigidity and, yet, leaving the  
unsheathed second arm 26 sufficiently flexible to move freely when acted upon by  
9 secondary forces.

10 The Board's attention is drawn first to the fact that the first arm 24 and the second  
11 arm 26 do share a shaft locking means to secure the first arm 24 proximal the first end.  
12 Thus Boullt et al specifically fails to demonstrate claim 1 subparagraph "e. lure shaft  
13 locking means (110) proximal the first end (20) to secure the lure shaft first end (50);...".

14 The Examiner incorrectly analogizes Boullt et al tube 28, as "an elongated lure  
15 shaft 28". It rather is a tube 28 which reinforces arm 24. The Examiner incorrectly  
16 analogized tube 28 ("the lure shaft 28) sized to receive a lure or bait; *the bait secured*  
17 from "throw off" by the lure shaft at the lure shaft first end being received by the locking  
18 means which the Examiner states is "best seen in figure 8[of Boullt et al], where elements  
19 24 and 48 join in a joint covered by the body portion 46." Here the Examiner has  
20 ascribed a non-existing "locking means" attribute to tube 28 and the structure of Boullt et  
21 al. Your applicants invention presents a

22 "primary shaft (10)...[and]...an elongated lure shaft (40)...[with]...lure shaft  
23 locking means (110) proximal the first end (20) to secure the lure shaft first end  
24 (50); means proximal the first end to receive fishing leader...the bait secured from  
"throw off" by the lure shaft (40) at the lure shaft first end (50) being received by  
the locking means 9110."

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1           The Boullt et al elements 24 and 48 and other elements pertinent to the  
2 examination of the limitations of your present invention are address in Boullt et al at  
3 column 5 commencing at line 32 as follows:

4           A conventional fishing hook 42 is angularly crimped onto the outermost end of  
5 the first arm 24 and tube 28...with its obvious purpose of retaining a fish when  
6 caught. The angle of the hook 42, with respect to the arm 24, is preferably from  
7 40 degrees to 50 degrees, with 45 degrees optimum...A weighted head 44  
surrounds the hook r2 at the crimp interface...The head 44, shown best in FIG. 8,  
consists of a head portion 46, neck 48, collar 50, and trailer keeper 52, and is  
constructed...

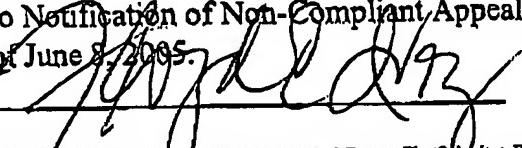
8           The Board is respectfully urged to appreciate that Boullt et al does not present a  
9 primary shaft (10) and a lure shaft (40), the two of which are secured together by locking  
10 means (110) such that bate is secured from "throw off". Rather, Boullt et al demonstrates  
11 a hook means is affixed at the equivalent of the present invention's lure shaft (40) first  
12 end (50). This is in opposition of the placement of the hook means (70) in the present  
13 invention at the lure shaft second end (60) and the primary shaft second end (30) of the  
14 present invention.

15           Additionally, the Boullt et al tube (28), which is similar to the lure shaft (40) of  
16 the present invention, is not received and locked at a locking means (110) as seen in your  
17 applicants invention disclosure and claim.

18           The applicant has amended the Drawings and has submitted substitute Drawings.  
19 However, the structural differences between your applicant's invention and that of Boullt  
20 is seen in the comparison of the Figures as originally submitted with this application.  
21 Both the substitute drawings and the original drawings are included in the Appendix to  
22 this Brief on Appeal.

23           It is respectfully submitted that said differences distinguish your applicant's  
24 invention from that of Boullt et al. Your applicant respectfully requests the Board to find  
25

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1 that Boullt et al does not anticipate the present structure and hence fails under 35 U.S.C.  
2 102(b).

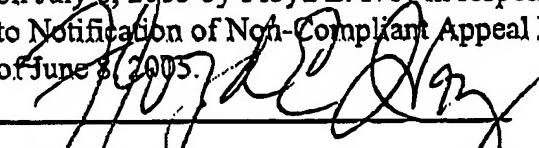
3  
4 **CLAIM 2:** Regarding the Examiner's rejection of Claim 2, the Examiner  
5 compares that portion of Boullt between "26 and 22" with the present invention "shaft  
6 interconnection means ...by welding, wire wrap, wire twist, or ferrule" of the primary  
7 shaft (10) at the second end (30) with the lure shaft second end (60).

8 Your applicant respectfully draws the Board's attention to the structure of Boullt  
9 et al at the "26 to 22" portion where a single wire is bent at 22 of Boullt et al thereby  
10 forming a first arm 24 and a second arm 26. (Boullt et al at col 4/lines 22-23). Your  
11 applicant respectfully argues that this forming of a "...substantially V-shape at an apex...",  
12 seen in Boullt et al at col 4/line 22, is not the structure described and claimed by your  
13 applicant in joining the primary shaft and the lure shaft.

14 The Examiner, at paragraph 3, last phrase of the Examiner's Action of August 6,  
15 2004, refers to "lure shaft locking means is by ferrule means (40)" for Boullt et al. The  
16 Board's attention is drawn to Boullt et al col 5/lines 26-28 and the identification of  
17 hollow sleeve (40). The Board will see that the hollow sleeve (40) of Boullt is at the  
18 structural equivalent of the first end (20) of the primary shaft (10) of your applicant's  
19 invention rather than at the lure shaft first end (50). That is, the hollow sleeve (40) of  
20 Boullt et al secures the "primary shaft" or second arm (26) of Boullt et al rather than the  
21 lure shaft.

22 It is respectfully submitted that said differences in structure both disclosed and  
23 claimed distinguish your applicant's invention from that of Boullt et al. Your applicant  
24 respectfully requests the Board to find that Boullt et al does not anticipate the present  
25 structure and hence fails under 35 U.S.C. 102(b).

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1           CLAIM 3: Regarding the Examiner's rejection of Claim 3, the Examiner again  
2 observes "the shaft interconnection means is by wire twist of the lure shaft 22 proximal  
3 the lure shaft second end about the primary shaft proximal the second end" with reference  
4 to elements 20, 22 of Boullt et al in Fig. 8. The Board's attention is directed to the  
5 continuous wire shaft of Boullt et al extending to form the first leg 24 and the second leg  
6 26 with a V-shape apex formed at the bend 22. There is no comparable structure in  
7 Boullt et al to the present invention's primary shaft (10) and the lure shaft (40) and the  
8 interconnection of the two as is seen in your applicant's invention. Arguments set forth  
9 regarding Claims 1 and 2 are here incorporated relative to the basis for rejection of Claim  
10 3.

11           The Examiner refers to a double barrel ferrule 40 in Boullt et al. The Board's  
12 attention is drawn to the fact that there is no double barrel ferrule in Boullt et al by  
13 reference to Boullt et al at column 5/lines 26-27 where the element indicated by the  
14 Examiner as a double barrel ferrule 40 in Boullt is stated as "...a hollow cylinder 40  
15 illustrated by itself in FIG. 6." However, the Board's attention is more specifically  
16 directed to the disclosure in Boullt et al at col 5/lines 10-30 where both a sleeve 36 and a  
17 hollow cylinder 40 is discussed and depicted in FIG 1, 3, 5, 6 and 9 where the sleeve 36  
18 or hollow cylinder 40 is depicted as a closure device to form Boullt et al arm 26 into an  
19 eye. This specific structure of Boullt et al, i.e., sleeve 36 as a closure device and arm 26  
20 closed into any eye, to be relevant here must be identical to the structure of your  
21 applicant's invention at subparagraph e. of claim 1 stating "e. lure shaft locking means  
22 (110) proximal the first end (20) to secure the lure shaft first end (50); means proximal  
23 the first end to receive fishing leader;" The closure sleeve 36 of Boullt et al does not  
24 engage the second end (30) of a primary shaft (10) and the lure shaft (40) at the lure shaft  
25 second end (50). The structure of your applicant's disclosure and claim is not found in

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1 Boullt et al.

2       The Examiner, at page 3, paragraph 4 in the Action of August 6, 2004, observes,  
3 in Boullt et al, the use of a "ferrule" 28 having a first ferrule end and a second ferrule end  
4 with the second ferrule end receiving the hook shaft. The Board is respectfully directed  
5 to Boullt et al at col 4/line 21-23 where the "wire shaft 20 angularly bent into a  
6 substantially V-shape at an apex 22 forming a first arm 24 and a second arm 26. And the  
7 Board is directed to col 4/line 33-34 stating "The prime novelty of the invention [of  
8 Boullt] resides in the addition of a hollow tube 28 positioned over and intimately  
9 surrounding the shaft first arm 24. This tube 28 reinforces..." Hence, there is no ferrule  
10 28 in Boullt et al. Rather, in Boullt, col 5/lines 30-33, "A conventional fishing hook 42 is  
11 angularly crimped onto the outermost end of the first arm 24 and tube 28, as depicted in  
12 the cross-section of FIG. 8 ..." The Examiner's reference to "ferrule" 28 is directed to  
13 analogizing the tube 28 of Boullt et al with the structure of the present invention namely  
14 "...a ferrule (100) having a first ferrule end (102) and a second ferrule end (103; the first  
15 ferrule end (102) receiving the primary shaft (10) at the second end (30); the second  
16 ferrule end (103) receiving the hook shaft (90); crimping means to secure the ferrule  
17 (100) to the primary shaft (10) and to the hook shaft (90)." The fact of the Boullt et al  
18 fishing hook 42 crimping onto the "...tube 28..." distinguishes the Boullt et al structure  
19 from that of the present invention.

20       Of greater pertinence is the structure disclosed in Boullt et al, col 4/lines 21-23  
21 "The preferred embodiment...is comprised of a wire shaft 20 angularly bent into a  
22 substantially V-shape at an apex 22 forming a first arm 24 and a second arm 26..." and at  
23 Col 4/lines 33- "The prime novelty of the invention resides in the addition of a hollow  
24 tube 28 positioned over and intimately surrounding the shaft first arm 24. This tube 28  
25 reinforces the arm 24, increasing the stiffness and changing the structural integrity

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On June 8, 2005.

1 entirely, thus augmenting the first arms 24 rigidity and, yet, leaving the unsheathed  
2 second arm 26 sufficiently flexible to move freely when acted upon by secondary  
3 forces..." At col 5/lines 3-8 "Further, the shaft 20 is configured with an arched open loop  
4 30 formed integrally with the hollow tube 28 at the apex of the V-shape...as the purpose  
5 of the loop is to provide an attachment for the fishing line..." The open loop 30 fulfills  
6 the purpose of the first end (20) of the primary shaft (10) of your applicant's invention  
7 and comprises a distinctly different structure. In Boullt et al, a fish hook 42 is attached to  
8 first arm 24. Your applicant's disclosure and claim is for a fish hook (70) to be affixed by  
9 means at the primary shaft (10) proximal the second end (60). The structures are  
10 distinctly different.

11 Your applicant respectfully requests the Board to find that Boullt et al does not  
12 anticipate the present structure and hence fails under 35 U.S.C. 102(b).

13

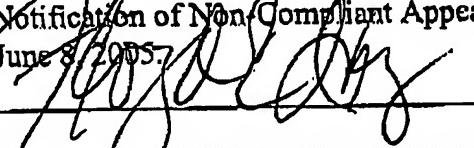
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15       **B. Regarding Rejections of Claim 4 under 35 U.S.C. 103(a):**

16       Law regarding 35 U.S.C. 103(a).

17       The absence of a feature similar to the feature or features of the present invention  
18 are respectfully argued as references which teach away from the disclosed and claimed  
19 invention and thus are not appropriately a basis of rejection under 103 *National Steel Car,*  
20 *Ltd. v. Canadian Pacific Ry., Ltd.* 357 F.3d 1319, 1339 (C.A.Fed. Pa. 2004). In general a  
21 reference will teach away if the line of development flowing from the references  
22 disclosure is unlikely to be productive of the result sought by the applicant. The  
23 structural distinctions demonstrated in Argument relating to the rejection under 35 U.S.C.  
24 102(b) demonstrate that Boullt et al does not flow toward the structures of your present  
25 applicant's invention and hence teach away from the present invention.

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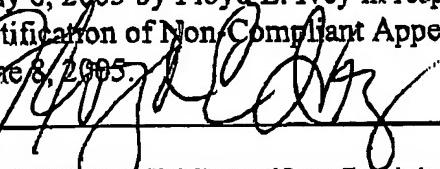


1       The Examiner has urged prior art alone and in combination as rendering obvious  
2 the present invention. However, there is not demonstrated teaching, suggestion or  
3 motivation to so combine the several components in the manner done by your present  
4 applicant. Such recitation of prior art does not form a basis for rejection as obvious. C.R.  
5 Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340, 1361, 48 USPQ2d 1225, 1240 (Fed. Cir.  
6 1998), rehearing denied & suggestion for rehearing in banc declined, 161 F.3d 1380 (Fed.  
7 Cir. 1998) ("The ultimate question is whether, from the evidence of the prior art and the  
8 knowledge generally available to one of ordinary skill in the relevant art, there was in the  
9 prior art an appropriate teaching, suggestion, or motivation to combine components in the  
10 way that was done by the inventor."); Chiuminatta Concrete Concepts, Inc. v. Cardinal  
11 Industries, Inc., 145 F.3d 1303, 1312, 46 USPQ2d 1752, 1759 (Fed. Cir. 1998) ("for a  
12 claim to be invalid for obviousness over a combination of references, there must have  
13 been a motivation to combine the prior art references to produce the claimed invention.");  
14 Kahn v. General Motors Corp., 135 F.3d 1472, 45 USPQ2d 1608 (Fed. Cir. 1998), cert.  
15 denied, 119 S. Ct. 177 (1998); Fromson v. Anitec Printing Plates, Inc., 132 F.3d 1437,  
16 1447, 45 USPQ2d 1269, 1276 (Fed. Cir. 1997), cert. denied, 119 S. Ct. 56 (1998) ("there  
17 is no suggestion or teaching in the prior art to select from the various known procedures  
18 and combine specific steps, along with a new electrical structure, in the way that is  
19 described and claimed by [the patentee]."); Gambro Lundia AB v. Baxter Healthcare  
20 Corp., 110 F.3d 1573, 1578-79, 42 USPQ2d 1378, 1383, 1384 (Fed. Cir. 1997) ("the  
21 record must provide a teaching, suggestion, or reason to substitute computer-controlled  
22 valves for the system of hoses in the prior art. The absence of such a suggestion to  
23 combine is dispositive in an obviousness determination."); "Without a suggestion or  
24 teaching to combine, [the accused infringer's] case of obviousness suffers a significant  
25 deficiency."); Kolmes v. World Fibers Corp., 107 F.3d 1534, 1541, 41 USPQ2d 1829,

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1 1833 (Fed. Cir. 1997) (the district court did not err in holding the patent in suit not invalid  
2 for obviousness; the patent concerned a cut-resistant yarn for use in making products such  
3 as gloves, which, unlike prior art yarns, did not use metallic components such as wire; the  
4 yarn includes two core strands wrapped in opposite directions around two covering  
5 strands; one core strand is fiberglass; the other core strand and the covering strands are  
6 nylon or other material; the patent's claim required, inter alia, that there be a two strand  
7 core and that the covering strands be "wrapped about said core at the rate of 8-12 turns  
8 per inch."; a prior art reference showed a yarn with a wrapping rate of 2-24 turns per inch,  
9 but the reference disclosed the use of wire, and the accused infringer "has shown no  
10 suggestion or motivation to modify the teaching of the [reference] with regard to  
11 non-metallic fibers."); Litton Systems, Inc. v. Honeywell, Inc., 87 F.3d 1559, 1568, 39  
12 USPQ2d 1321, 1327 (Fed. Cir. 1996) ("[N]one of the prior art references, alone or in  
13 combination, teach or suggest a method [specified in the patent's claims]. The prior art  
14 simply does not contain many limitations in the claimed method. Furthermore, the record  
15 discloses no teaching or suggestion to combine any of these references. The absence of a  
16 suggestion to combine is telling in an obviousness determination."); Beachcombers,  
17 International, Inc. v. WildeWood Creative Products, Inc., 31 F.3d 1154, 1161-62, 31  
18 USPQ2d 1653, 1659 (Fed. Cir. 1994) (the patent claims in suit were not obvious in view  
19 of the prior art because the art did "not remotely suggest configuring" the device as  
20 required by the claim); Heidelberger Druckmaschinen AG v. Hantscho Commercial  
21 Products, Inc., 21 F.3d 1068, 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1993) ("When the  
22 patented invention is made by combining known components to achieve a new system,  
23 the prior art must provide a suggestion or motivation to make such a combination.").  
24 Texas Instruments Inc. V. U.S. Int'l Trade Comm'n, 988 F.2d 1165, 1174, 1178, 26  
25 USPQ2d 1018 (Fed. Cir. 1993) for the proposition that obviousness is not supported

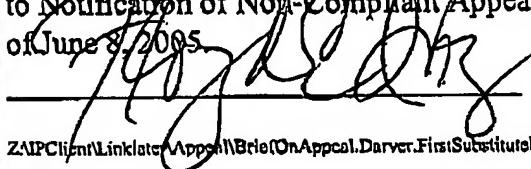
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1 where the references do not demonstrate to combine to produce the invention as presently  
2 disclosed.

3       The issue of viewing the present invention as a template is an inappropriate basis  
4 for rejection on the basis of obviousness. The prior art "references in combination do not  
5 suggest the invention as a whole claimed in the ... patent. Absent such a suggestion to  
6 combine the references, respondents can do no more than piece the invention together  
7 using the patented invention as a template." *Heidelberger Druckmaschinen AG v.*  
8 *Hantscho Commercial Products, Inc.*, 21 F.3d 1068, 30 USPQ2d 1377 (Fed. Cir. 1993)  
9 where the court held that "The motivation to combine references can not come from the  
10 invention itself."

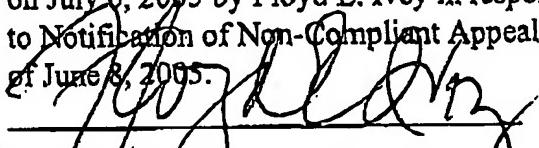
11       The applicant respectfully submits that the references, alone and in combination,  
12 otherwise must constitute improper use of hindsight reconstruction. *In Re Pleuddeman*,  
13 910 F.2d 823, 827, 15 US PQ2d 1738, 1742 (Fed. Cir. 1990). The cases cited stand for  
14 the rule that decomposing an invention into its constituent elements, finding each element  
15 in the prior art, and then claiming that it is easy to reassemble these elements into the  
16 invention, is a forbidden ex post analysis. The applicant submits that it is impermissible  
17 to use the claimed invention as an instruction manual or template to piece together the  
18 teachings of the prior art so that the claimed invention is rendered obvious. The  
19 references simply do not teach to combine the requisite features of your applicant's  
20 invention. "Before the PTO may combine the disclosures of two or more prior art  
21 references in order to establish Prima Facie obviousness, there must be some suggestion  
22 for doing so, found either in the references themselves or in the knowledge generally  
23 available to one of ordinary skill in the art. (*IN RE Jones*, 958 F.2d 347, 351, 21 USPQ2d  
24 1941, 1943-44 (Fed. Cir. 1992)). "Evidence of a suggestion, teaching, or motivation to  
25 combine prior art references may flow, inter alia, from the references themselves, the

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1 knowledge of one of ordinary skill in the art, or from the nature of the problem to be  
2 solved. See In Re Dembiczak, 175 F.3d 994, 998-99, 50 USPQ2d at 1617. Although a  
3 reference need not expressly teach that the disclosure contained therein should be  
4 combined with another, see Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461,  
5 1472, 43 USPQ2d 1481, 1489 (Fed. Cir. 1997), the showing of combinability, in  
6 whatever form, must nevertheless be "clear and particular." Dembiczak, 175 F.3d at 999,  
7 50 USPQ2d at 1617." Winner International Royalty Corporation v. Ching-Rong Wang,  
8 202 F.3d 1340, 1349 (CAFC 2000).

9                   **UNEXPECTED IMPROVED QUALITIES.** Your applicant respectfully  
10 comments on the unexpected improved qualities inherent in this disclosure and  
11 particularly in contrast to the disclosures of cited in the Examiner's Action. The  
12 recognition that the spring function between the primary shaft and the lure shaft when the  
13 lure shaft is received into the second barrel as a means of lessening the "throw off" of bait  
14 is seen as an unexpected improvement over the cited art.

15                   These stated features solves a concern of fisherman in lessening the likelihood  
16 of loss of bate. "Factors including unexpected results, new features, solution of a  
17 different problem, novel properties, are all considerations in the determination of  
18 obviousness in terms of 35 U.S.C. S 103. When such factors are described in the  
19 specification they are weighed in determining, in the first instance, whether the prior art  
20 presents a prima facie case of obviousness ... When such factors are brought out in  
21 prosecution before the PTO, they are considered in determining whether a prima facie  
22 case, if made based on the prior art, has been rebutted." *IN RE Wright*, 848 F.2d 1216,  
23 1219, 6 USPQ2d 1959, 1962 (Fed. Cir. 1988), DISAPPROVED IN PART, *IN RE Dillon*,  
24 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), CERT. DENIED, *Dillon v. Manbeck*,  
25 111 S. Ct. 1682 (1991), discussed in CHISUMS at S 5.04[6][d]; *IN RE Merchant*, 575

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1 F.2d 865, 869, 197 USPQ 785, 788 (CCPA 1978) (stressing that there is no requirement  
2 that the "unexpected results relied upon for patentability be recited in the CLAIMS". "It  
3 is entirely proper, nevertheless, in evaluating nonobviousness, for a court to take to  
4 account advantages directly flowing from the invention patented. After all, those  
5 advantages are the foundation of that 'commercial success' which may be evidence of  
6 nonobviousness." *Preemption Devices, Inc. v. Minnesota Mining & Mfg. Co.*, 732 F.2d  
7 903, 907, 221 USPQ 841, 844 (Fed. Cir. 1984).

8 The applicant has set forth arguments and law for the basis upon which prior art  
9 cited under 35 U.S.C. 103 should not result in a conclusion of obviousness for the present  
10 invention as specified and claimed. The applicant has presented features of the present  
11 invention which are not found within the claims of either reference patent.

12

13 **SUMMARY of Law regarding 35 U.S.C. 103(a):**

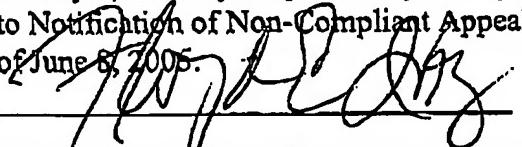
14 Thus, in summary regarding Claim 4, rejected under 35 U.S.C. 103(a), has the  
15 following been shown:

16 1. That there is present, in the prior art, a feature similar to the feature or  
17 features of the present invention and that hence the cited prior art reference(s) do not  
18 teach away from the disclosed and claimed invention.

19 2. That there is motivation to combine the prior art references.

20 3. From the evidence of the prior art and the knowledge generally available to  
21 one of ordinary skill in the relevant art, there was in the prior art an appropriate teaching,  
22 suggestion, or motivation to combine components in the way that was done by the  
23 inventor.

24 The assertion of obviousness is defeated if there is no suggestion or teaching in  
25 the prior art to select from the various known procedures and combine specific steps...in

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1 the way that is described and claimed by the applicant.

2       The record must provide a teaching, suggestion, or reason to substitute for the  
3 elements of the structure in the prior art. The absence of such a suggestion to combine is  
4 dispositive in an obviousness determination.

5       Without a suggestion or teaching to combine, the urging of obviousness suffers  
6 a significant deficiency.

7       An unexpected improved quality is found in the spring function between the  
8 primary shaft (10) and the lure shaft (40) when the lure shaft is received into the second  
9 barrel as a means of lessening the "throw off" of bait which is seen as an unexpected  
10 improvement over the cited art.

11      Your applicant respectfully asserts that the references taken as a whole do not  
12 suggest the claimed subject matter of the present invention and that the combination  
13 indicated is improper. Examiner has not met the requirements of the cases and principals  
14 above cited. Your applicant respectfully asserts that the structures of Boullt et al differ  
15 from the structure claimed in Claim 4 and hence that the reference of Boullt et al and of  
16 Boullt

17

18

#### CLAIM 4:

19      Regarding the Examiner's rejection of Claim 4: The Examiner, at paragraph 6  
20 rejected Claim 4 under 35 U.S.C. 103(a) as being unpatentable over Boullt et al in view  
21 of Ogle. The Examiner notes that Boullt et al discloses a metal wire with a spring  
22 function at col 4/lines 22-25. The Board is referred to Boullt et al claim5 regarding a  
23 "spring" function in Boullt. The reference at col 4/lines 22-25 to "spring" is to the  
24 preferred material for the forming of the continuous wire comprising the first arm and  
25 second arm, 24 and 26, but does not then describe a spring function between the first arm

26

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1 and the second arm, 24 and 26.

2 This is a distinctly different structure from that described by your applicant at  
3 the patent application page 4 commencing at line 14 and claimed at claim 4 where the  
4 lure shaft (40) is urged away from the primary shaft (10) by a spring function when the  
5 lure shaft (40) is received into the second barrel (130).

6 Your applicant respectfully requests the Board to find that Boullt et al does not  
7 teach a spring function to urge separation of a lure shaft (40) from a primary shaft (10),  
8 does not render obvious the present structure and hence fails under 35 U.S.C. 103(a).

9 The Examiner has cited Ogle for the use of copper wire in fishing lures and  
10 concludes that the color "tobacco" is completely equivalent to the color "copper" based  
11 on the Examiner's personal experience in being raised on a tobacco farm. The  
12 Examiner's comment is a belief or conclusion without cited authority and is thus without  
13 basis for use in rejection of a patent claim. An applicant has a duty to resist an  
14 Examiner's assertions of unsupported beliefs. *Omark Industries, Inc. v. Carlton Co.* 458  
15 F.Supp. 449, 453 (D.C.Or.1978)

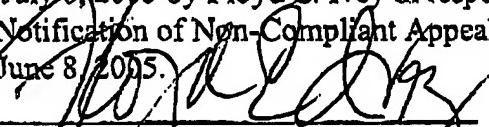
16 Your applicant respectfully requests the Board to find that Boullt et al in view  
17 of Ogle does not render claim 4 obvious and hence fails under 35 U.S.C. 103(a).

18 **UNEXPECTED RESULT:** An unexpected improved quality is found in the  
19 spring function between the primary shaft (10) and the lure shaft (40) when the lure shaft  
20 is received into the second barrel as a means of lessening the "throw off" of bait which is  
21 seen as an unexpected improvement over the cited art.

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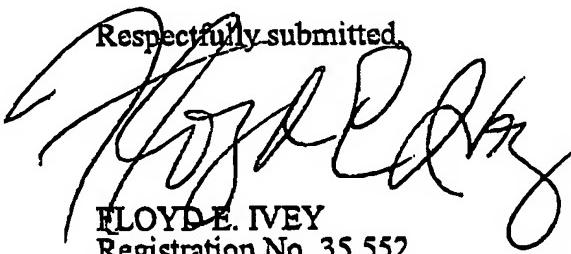
23 **SUMMARY OF APPEAL ARGUMENTS AND APPEAL FILING**

24 The applicant hasAppealed the Examiner's Final Office Action of August 6,  
25 2004 with the Appeal filed November 1, 2004. This Brief on Appeal was filed less than

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1 60 days from the filing of the Appeal in accordance with 35 CFR 41.37(a)(1) which  
2 requires filing of the Appellant's Brief within two months from the date of the notice of  
3 appeal. Your applicant has tendered the original Brief on Appeal with the fees required  
4 in 37 CFR 1.17(c) in the amount of \$250.00. Your applicant has herein responded to the  
5 Examiner's Notification of Non-Compliant Appeal Brief pursuant to 37 CFR 41.37  
6 which was mailed by the Examiner June 8, 2005 and now submits a First Substitute Brief  
7 on Appeal. Your applicant respectfully requests the Board to allow the claims as  
8 presented.

9 Respectfully submitted,

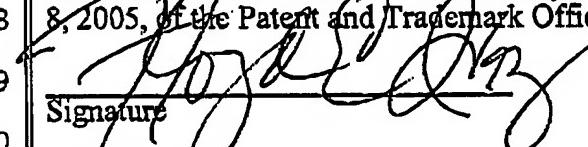
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11 FLOYD E. IVEY  
12 Registration No. 35,552

13 Telephone No. (509) 735-3581

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15 CERTIFICATE OF TRANSMISSION:

16 The undersigned hereby certifies that this correspondence is being facsimile transmitted  
17 to BOARD OF PATENT APPEALS AND INTERFERENCES, APPEAL from the  
18 FINAL OFFICE ACTION OF AUGUST 6, 2004 BY EXAMINER BETHANY L.  
19 GRJES, 7034305-1839, Art Unit 3643, and from the Notice of Noncompliance of June  
20 8, 2005, of the Patent and Trademark Office Fax No. (571) 273 0052 on July 6, 2005.

21 Signature

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23 Floyd E. Ivey

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1 CLAIMS APPENDIX --CFR 41.37(c)(1)(viii)

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3 Claims 1, 3 and 4 were amended in the Response filed June 3, 2004.

4

5 1. (Previously amended) A fishing lure comprising:

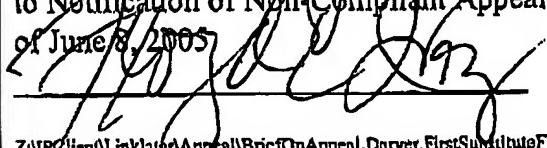
- 6       a. an elongated primary shaft having a first end and a second end;
- 7       b. an elongated lure shaft having a lure shaft first end and a lure shaft second
- 8 end;
- 9       c. the lure shaft at the lure shaft second end fixedly interconnected by shaft
- 10 interconnection means to the primary shaft proximal the second end;
- 11       d. a fish hook means having a hook shaft; the hook shaft secured by hook shaft
- 12 affixing means to the primary shaft proximal the second end;
- 13       e. lure shaft locking means proximal the first end to secure the lure shaft first
- 14 end; means proximal the first end to receive fishing leader;
- 15       f. the lure shaft sized to receive a lure or a bate; the bate secured from "throw
- 16 off" by the lure shaft at the lure shaft first end being received by the locking
- 17 means.

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19 2. (Original) The fishing lure according to claim 1 further comprising:

- 20       a. the elongated primary shaft and the lure shaft are composed of a rigid
- 21 material;
- 22       b. the shaft interconnection means is by welding, wire wrap, wire twist, or
- 23 ferrule;
- 24       c. hook shaft affixing means to the primary shaft is by welding, wire wrap,
- 25 wire twist or ferrule;

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## 1 CLAIMS APPENDIX --CFR 41.37(c)(1)(viii) - continued

2 d. lure shaft locking means is by ferrule means.

3

4 3. (Original) The fishing lure according to claim 2 further comprising:

5 a. the rigid material composing the primary shaft and the lure shaft formed  
6 from metal wire;7 b. the shaft interconnection means is by wire twist of the lure shaft proximal  
8 the lure shaft second end about the primary shaft proximal the second end;9 c. the lure shaft locking means is by a double barrel ferrule; the double barrel  
10 ferrule having a first barrel receiving and securing the primary shaft proximal the first end  
11 and having a second barrel receiving the lure shaft at the lure shaft first end;12 d. the hook shaft affixing means to the primary shaft is by a ferrule having a  
13 first ferrule end and a second ferrule end; the first ferrule end receiving the primary shaft  
14 at the second end; the second ferrule end receiving the hook shaft; crimping means to  
15 secure the ferrule to the primary shaft and to the hook shaft.

16

17 4. (Previously amended) The fishing lure according to claim 3, further comprising:

18 a. the metal wire is a tobacco colored wire;

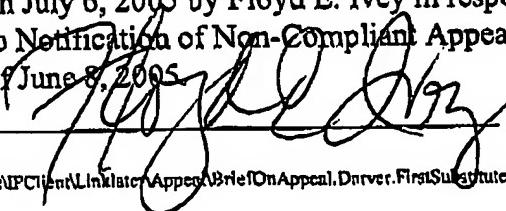
19 b. the lure shaft having a spring function urging the lure shaft away from the  
20 primary shaft when the lure shaft (40) is received into the second barrel (130).

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1 EVIDENCE APPENDIX- CFR 41.37(c)(1)(ix)  
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5 **NONE**  
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1 RELATED PROCEEDINGS APPENDIX - CFR 41.37(c)(1)(x)  
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4

5 **NONE**  
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